

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1171 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

V PATEL

Versus

ADDL. DEVELOPMENT COMMISSIONER

Appearance:

MR AR MAJMUDAR for Petitioner
MR RC KODEKAR, AGP for Respondent No. 1
MR BS PATEL for Respondents No. 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/09/2000

ORAL JUDGEMENT

By means of filing this petition under Articles

226 & 227 of the Constitution, the petitioner has prayed to quash and set aside order dated November 18, 1987 passed by the District Agricultural Officer, Vadodara, by which his prayed to treat him in continuous service from 1978 till 1983 is rejected on the ground that he was not one of the petitioners in Special Civil Application No.1801/81 and, therefore, not entitled to the benefit of the judgment delivered in the said petition. The petitioner has also prayed to quash and set aside order dated March 23, 1989 passed by the District Development Officer, Vadodara under Rule 19 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 by which order dated November 18, 1987 passed by the District Agricultural Officer, Vadodara is confirmed as well as order dated November 30, 1990 passed by the State Government in Appeal No. 113/89 by which orders passed by the District Agricultural Officer, Vadodara and District Development Officer, Vadodara are confirmed. The petitioner has further prayed to declare that the petitioner is entitled to the benefit of continuous service from 1978 till 1983 with all benefits of seniority etc.

2. Initially the petitioner was appointed as a Gram Sevak, District Panchayat, Vadodara in the year 1978. In 1981 he had appeared at the oral examination which was conducted by the Panchayat Service Selection Board, but the petitioner could not succeed in the same. On the basis of result of oral examination, services of the petitioner were terminated by an order dated July 27, 1981, which is produced at Annexure-B to the petition. It is relevant to notice that along with the petitioner, services of other Gram Sevaks, who had failed at the oral examination, were also terminated. Some of them had challenged the order terminating their services by way of filing Special Civil Application No.1801/81 and other petitions. The group of petitions was decided by the court vide judgment dated November 16/17/18, 1981. The learned Single Judge of this Court on interpretation of provisions of the Gujarat Panchayats Act, 1961 and the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967, held that Selection Committee was bound to hold a qualifying written test for the purpose of selection of candidates for appointment as Gram Sevaks and selection made without holding qualifying test was illegal and liable to be struck down. While allowing the petitions, following directions were given by the Court in Para-11 of the judgment :-

"(i) The selection list prepared by the Selection Committee in respect of appointment to the post

of Gram Sevaks in the various Panchayats solely on the basis of the oral test is quashed and set aside and it is directed that no appointment shall be made therefrom;

- (ii) The question of age-bar shall be reconsidered by the Selection Committee in the case of those candidates, who were not called for interview solely on the ground that they are age-barred in the light of the observations made in this judgment and having regard to the provisions in rule 7(3) of the recruitment rules wherever applicable;
- (iii) Candidates who applied under the advertisement, Anneuxre-C to Special Civil Application No. 1801 of 1981 shall be recalled for test in the light of the observations made in this judgment and having regard to the amendment made by the notification of 25th September, 1981;
- (iv) While selecting candidates for appointment to the posts of Gram Sevaks, weightage in regard to experience shall be given as part the relevant date mentioned in the said advertisement;
- (v) the selection committee should complete the selection process within a period of two months from today in the light of the observations made in this judgment and the directions;
- (vi) those who are presently in position in the various District Panchayats shall not be disturbed till fresh selections are made by the selection committee for the respective District Panchayats; and
- (vii) those petitioners who were discharged on appointments having been made from the impugned select list prepared by the Selection Committee shall be reinstated with full back wages in the respective Panchayat by creating supernumerary posts, if necessary, till a fresh selection list is prepared and appointments are made therefrom."

3. A bare look at the above-referred to directions makes it clear that it was one of the directions given by the Court that those petitioners who were discharged on appointments having been made from the select list prepared by the Selection Committee, were to be

reinstated with full back wages in the respective Panchayat by creating supernumerary posts, if necessary, till a fresh select list was prepared and appointments were made therefrom. The relevant extract of the judgment rendered in Special Civil Application No. 1801/81 is produced by the petitioner at Annexure-C to the petition.

4. On the basis of the directions of the High Court, written as well as oral examinations were conducted and the petitioner succeeded in both the examinations. The petitioner was, therefore, reinstated as Gram Sevak in the year 1983. According to the petitioner, his earlier termination of service was nonest because the examination conducted by the Panchayat Service Selection Board was contrary to the Rules interpreted by the High Court and, therefore, he was entitled to continuity of service from 1978. According to the petitioner, his appointment in the year 1983 as Gram Sevak on his passing written as well as oral examinations conducted by Panchayat Service Selection Board could not have been treated as fresh appointment and he was entitled to the benefit of continuity in service from the year 1978. Under the circumstances, the petitioner applied to the District Agricultural Officer, Vadodara for grant of benefit of continuity in service from the year 1978. The District Agricultural Officer, Vadodara rejected the prayer made by the petitioner vide order dated November 18, 1987 on the ground that the petitioner was not one of the employees who had approached the High Court by way of filing Special Civil Application No. 1801/81 and was, therefore, not entitled to the benefit of the said judgment. The order passed by the District Agricultural Officer, Vadodara is produced by the petitioner at Annexure-D to the petition. Feeling aggrieved by the said order, the petitioner preferred an appeal before the District Development Officer, Vadodara who rejected the same by order dated February 28, 1989, which is produced at Annexure-E to the petition. The petitioner thereafter carried the matter before the State Government by filing Appeal No. 113/89, but the State Government has also rejected the same by an order dated November 30, 1990, which is produced at Annexure-F to the petition. According to the petitioner, the judgment of the High Court is based on interpretation of statutory provisions and, therefore, the benefit of the same could not have been denied to the petitioner on the ground that the petitioner was not one of the parties to the petition in which the said judgment was rendered. The petitioner has averred that the case of the petitioner is similarly situated with the case of other employees whose services

were terminated on their failure to pass oral examination and who were given benefit of continuity in service pursuant to the judgment of the High Court in Special Civil Application No. 1801/81 and, therefore, the respondents are not justified in denying the benefit of continuity in service to the petitioner on specious plea that the petitioner was not one of the parties to the proceedings initiated by other employees in the High Court. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

5. Though the respondents are duly served, none of them has filed any reply controverting the averments made in the petition.

6. I have heard the learned counsel for the parties and considered the documents forming part of the petition. It is not in dispute that services of the petitioner and other Gram Sevaks were terminated on their failure to pass oral examination which was conducted by Panchayat Service Selection Board. Some of the employees whose services were terminated, had approached the High Court by way of filing different petitions. The petitions were allowed and certain directions were given by the High Court which are extracted in the earlier part of this judgment. Learned counsel for the petitioner has produced full text of the judgment rendered in Special Civil Application No.1801/81 and other petitions for perusal of the Court. A bare reading of the said judgment makes it manifest that on interpretation of provisions of the Gujarat Panchayats Act, 1961 and Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967, it was held that the Selection Committee was bound to hold a qualifying written test for the purpose of selection of candidate for appointment as Gram Sevak and that selection made without holding a qualifying test was clearly illegal and liable to be struck down. Therefore, judgment of the High Court is based on interpretation of statutory provisions and is applicable to all whether an employee is a party to the said proceedings or not. When other employees whose services were terminated on their failure to pass oral examination, were given benefit of continuity of service, there was no valid reason for the respondents to deny the said benefit to the petitioner. The benefit of continuity in service could not have been denied to the petitioner on the ground that he was not one of the parties to the proceedings initiated by the other employees before High Court. Moreover, the learned counsel for the petitioner has produced Government Resolution dated December 18,

1981 before me. It is ordered to be taken on record of the case. Therein the history of earlier litigation is traced and held that Gram Sevaks, whose services were terminated because of their failure to pass oral examination and who were appointed after passing of written as well as oral examination, would be entitled to the benefit of continuity in service from initial date for the purpose of seniority, leave, pension etc. By this resolution, the earlier resolution dated June 2, 1983 is treated as cancelled. In the light of contents of resolution dated December 18, 1981 also, I am of the view that the petitioner is entitled to the benefit of continuity in service as claimed in the petition. The stand taken by the respondents that the petitioner is not entitled to the said benefit because he was not one of the petitioners in the petitions which were filed before the High Court cannot be sustained and will have to be disapproved.

For the foregoing reasons, the petition succeeds. The order dated November 18, 1987 passed by the District Agricultural Officer, Vadodara produced at Annexure-D, which is confirmed by order dated February 28, 1989 passed by the District Development Officer, Vadodara which is produced at Annexure-E as well as order dated November 30, 1990 passed by the State Government, which is produced at Annexure-F to the petition, are hereby set aside and quashed. The respondents are directed to treat services of the petitioner as continuous from the year 1978 till 1983 for the purpose of seniority, leave, pension and other benefits. It is clarified that the petitioner shall not be entitled to any back wages because of this relief. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)